

PUBLISH

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE JIMMY DEAN PEARSON and
JEANETTE LUCILLE PEARSON,
also known as Jeanette Lucille Carlson,

Debtors.

BAP No. WY-07-097

JIMMY DEAN PEARSON and
JEANETTE LUCILLE PEARSON,

Appellants,

v.

Bankr. No. 06-20528
Chapter 13

ORDER REOPENING APPEAL,
VACATING BANKRUPTCY COURT
RULING, AND DISMISSING
APPEAL

MARK R. STEWART, Trustee,

Appellee.

January 29, 2009

Before McFEELEY, Chief Judge, BOHANON, and THURMAN, Bankruptcy
Judges.

On September 7, 2007, Appellants Jimmy Dean Pearson and Jeanette Lucille Pearson filed their Notice of Appeal to this Court from the Order Confirming Third Amended Chapter 13 Plan, entered August 28, 2007, by the United States Bankruptcy Court for the District of Wyoming.

Appellant had filed a First Amended Chapter 13 Plan and Motions (“First Plan”) on April 27, 2007. The First Plan proposed to keep their cars, cramming down the secured debt. The Trustee objected, and a hearing was held on June 19, 2007. The bankruptcy court denied the motion on the record, stating that Appellants could retain one of their vehicles and claim a deduction based on the

monies owed, but that no ownership expense deduction could be taken for their fully paid for Buick in determining the amounts required on Form B22C and ultimately determining the amounts to be paid to their unsecured creditors under a plan. The court ordered that any amended plan must comply with those findings (“Order Denying Debtor’s First Plan”).

The crux of Appellants’ claim on appeal was that confirmation of their subsequent Third Amended Plan was premised upon the court’s erroneous denial of confirmation of their First Plan on the ground that under 11 U.S.C. § 707(b)(2)(A)(ii)(I) they had wrongfully claimed an ownership expense deduction on their fully paid for Buick, which thereby prevented them from including this deduction in calculating the amounts to be paid in the Third Amended Plan.

This Court agreed with Appellants, and on July 28, 2008, reversed the determination of the bankruptcy court, holding that the means test allows a debtor to take the full vehicle ownership/lease expense deduction even when the vehicle is unencumbered by lease or secured payments at the time of the bankruptcy filing (the “BAP Opinion”).

On August 15, 2008, the Trustee Appellee Mark R. Stewart appealed to the United States Court of Appeals for the Tenth Circuit from the BAP Opinion. On January 22, 2009, the Court of Appeals entered its order dismissing Mr. Stewart’s appeal on the ground that it had become moot (the “Dismissal Order”).¹ The Dismissal Order vacates the BAP Opinion, and remands the matter to the BAP with instructions to vacate the bankruptcy court’s ruling as to the vehicle ownership deduction issue and dismiss this appeal.

Accordingly, it is HEREBY ORDERED that:

- (1) This appeal is REOPENED.

¹ See Dismissal Order attached hereto for the analysis of the Court.

- (2) The bankruptcy court's ruling as to the vehicle ownership deduction issue is VACATED.
- (3) This appeal is DISMISSED.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By: *Kathryn A. Plinski*

Deputy Clerk